



Docket No.: 246918US2

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ATTORNEYS AT LAW

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

RE: Application Serial No.: 10/759,029

Applicants: Hideki SUGIURA, et al.

Filing Date: January 20, 2004

For: TONER, DEVELOPER, IMAGE DEVELOPER AND
IMAGE FORMING APPARATUS

Group Art Unit: 1756

Examiner: Janis L. Dote

SIR:

Attached hereto for filing are the following papers:

Provisional Election

Our check in the amount of _____ is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF

HIDEKI SUGIURA, ET AL.

: EXAMINER: JANIS L. DOTE

SERIAL NO: 10/759,029

:

FILED: JANUARY 20, 2004

: GROUP ART UNIT: 1756

FOR: TONER, DEVELOPER, IMAGE
DEVELOPER AND IMAGE FORMING
APPARATUS

:

PROVISIONAL ELECTION

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Office Action mailed August 19, 2005, Applicants provisionally elect, with traverse, Group I, Claims 1-9 and 11-18, for further examination on the merits in the present application.

Applicants respectfully traverse the Restriction Requirement because the U.S. Patent and Trademark Office has not carried forward its burden of proof to establish distinctness.

In particular, MPEP § 803 states:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

The claims of the present invention would appear to be part of an overlapping search area.¹

¹ To do justice to either identified group of claims, it is respectfully submitted that it would be necessary to search in both Classes and Subclasses identified in paragraph 1 at page 2 of the outstanding Official Action.

Accordingly, Applicants respectfully traverse the outstanding Election requirement on the grounds that a search and examination of the entire application would not place a *serious* burden on the Examiner.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
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